

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROGER BASILE,

Plaintiff,

20-CV-00576 (EK)(LB)

-against-

**ANSWER TO
AMENDED COMPLAINT**

COUNTY OF NASSAU,
DETECTIVE JESSE PERKINS,
DETECTIVE ROBERT LASHINSKY,

Defendants.

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Defendants, County of Nassau, Detective Jesse Perkins and Detective Robert Lashinsky (collectively, the “County Defendants”), by their attorney, Thomas A. Adams, Nassau County Attorney, by Ralph J. Reissman, Deputy County Attorney, as and for their Answer to the Amended Complaint of plaintiff Roger Basile (“plaintiff”) filed June 21, 2023 [DE 47], state upon information and belief as follows:

AS AND FOR AN ANSWER TO “PARTIES”

1. Deny knowledge or information thereof sufficient to form a belief as to each and every allegation set forth in paragraph 1.
2. Admit the allegations set forth in paragraph 2.
3. Admit the allegations set forth in paragraph 3.
4. Admit the allegations set forth in paragraph 4.

AS AND FOR AN ANSWER TO “FACTUAL ALLEGATIONS”

5. Deny the allegations set forth in paragraph 5, except aver that plaintiff was arrested by members of the Nassau County Police Department on October 11, 2018, but was not arrested by any of the individual defendants.

6. Deny the allegations set forth in paragraph 6, except aver that plaintiff was held in an interrogation room in the Seventh Precinct.

7. Deny the allegations set forth in paragraph 7.

8. Admit the allegations set forth in paragraph 8.

9. Admit the allegations set forth in paragraph 9.

10. Admit the allegations set forth in paragraph 10.

11. Admit the allegations set forth in paragraph 11.

**AS AND FOR A RESPONSE TO “FIRST CAUSE OF ACTION
Excessive Force Pursuant to 42 U.S.C. § 1983 and New York State Law”**

12. In response to paragraph 12, the County Defendants repeat, reiterate and reallege each and every response to paragraphs 1 through 11 above with the same force and effect as if fully set forth at length herein.

13. Deny the allegations set forth in paragraph 13.

14. Deny the allegations set forth in paragraph 14.

15. Deny the allegations set forth in paragraph 15.

16. Deny the allegations set forth in paragraph 16.

17. Deny the allegations set forth in paragraph 17.

18. Deny the allegations set forth in paragraph 18.

19. Deny the allegations set forth in paragraph 19.

20. Deny the allegations set forth in paragraph 20.

21. Admit the allegations set forth in paragraph 21, except deny that while acting within the scope of their employment, defendants Perkins and Lashinsky ever came into physical contact with plaintiff.

22. Deny knowledge or information thereof sufficient to form a belief as to each and every allegation set forth in paragraph 22.

23. Deny the allegations set forth in paragraph 23.

**AS AND FOR A RESPONSE TO “SECOND CAUSE OF ACTION
Assault and Battery Pursuant to New York State Law”**

24. In response to paragraph 24 of the Amended Complaint, the County Defendants repeat, reiterate and reallege each and every response to paragraphs 1 through 23 above with the same force and effect as if fully set forth at length herein.

25. Deny the allegations set forth in paragraph 25.

26. Deny the allegations set forth in paragraph 26.

27. Deny the allegations set forth in paragraph 27.

28. Deny the allegations set forth in paragraph 28.

29. Admit the allegations set forth in paragraph 29, except deny that while acting within the scope of their employment, defendants Perkins and Lashinsky ever came into physical contact with plaintiff.

30. Deny knowledge or information thereof sufficient to form a belief as to each and every allegation set forth in paragraph 30.

31. Deny the allegations set forth in paragraph 31.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

32. The Amended Complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

33. Plaintiff's constitutional and statutory rights have not been violated by the County Defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

34. At all applicable times herein, and at all times mentioned in the Amended Complaint, defendant County of Nassau, its agencies, departments, officers, agents, servants and/or employees, including the Nassau County Police Department and their officers, agents, servants and/or employees, enjoyed, and continue to enjoy, an absolute, full, partial or qualified immunity from civil suit.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

35. At all applicable times herein, and at all times mentioned in the Amended Complaint, defendants Perkins and Lashinsky enjoyed, and continue to enjoy, a full, partial or qualified immunity from civil suit.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

36. At all applicable times herein, and at all times mentioned in the Amended Complaint, the County of Nassau, the Nassau County Police Department, and their officers, agents, servants and/or employees having anything to do with plaintiff, including defendants Perkins and Lashinsky, were acting in the performance of their respective duties as officers, agents, servants and/or employees of the County of Nassau and the Nassau County Police Department, and as officers, agents, servants and/or employees of the State of New York; that all of the acts of each officer, agent, servant and/or employee of the County of Nassau and the Nassau County Police Department in connection with the plaintiff were performed in good faith, without malice, and with reasonable and proper care in the ordinary course of their duties as officers, agents, servants and/or employees of the County of Nassau, the Nassau County Police Department and the State of New York.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

37. At all applicable times herein, and at all times mentioned in the Amended Complaint, the County Defendants' actions were in full accord with all applicable laws and statutes.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

38. Under the case of *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978) and its progeny, the alleged acts or omissions of defendants named in the Complaint, and/or any officers, agents, servants and/or employees of defendant County of Nassau, do not create vicarious liability against defendant County of Nassau pursuant to the doctrine of *respondeat superior* and, consequently, defendant County of Nassau cannot be liable for any acts or conduct of any individual defendant herein, and/or the acts or conduct of any agent, servant or employee of defendant County of Nassau with respect to any and all claims brought pursuant to 42 U.S.C. § 1983, as a matter of law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

39. Punitive damages may not be recovered against defendant County of Nassau, its agencies and departments as a matter of law.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

40. Plaintiff has failed to mitigate his damages in this action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

41. The arrest of plaintiff was supported by probable cause.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

42. The prosecution of plaintiff was supported by probable cause.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

43. If plaintiff sustained damages as alleged in the Amended Complaint, such damages were sustained through and by virtue of the negligent and/or wrongful conduct of parties other than the County Defendants, over whom the County Defendants exercised no control, without any negligent or wrongful conduct on the part of the County Defendants, their officials, agents, servants or employees contributing thereto.

WHEREFORE, the defendants, County of Nassau, Detective Jesse Perkins and Detective Robert Lashinsky demand judgment dismissing the Amended Complaint herein, together with the costs and disbursements of this action.

Dated: Mineola, New York
June 26, 2023

THOMAS A. ADAMS
County Attorney of Nassau County

By: /s/ Ralph J. Reissman
RALPH J. REISSMAN
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